55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1577.

ADDITIONAL JUDGE IN THE SIXTH JUDICIAL CIRCUIT.

JUNE 15, 1898.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 421.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 421) to provide for an additional circuit judge in the sixth judicial circuit, respectfully report as follows:

There are nine judicial circuits. Four of these have three circuit judges each. The general scheme of the law creating United States courts of appeals contemplated that there should be three circuit judges for each circuit, but Congress thought proper to give only two to five of the circuits, waiting for the development of business and experience to determine how rapidly additional circuit judges should be given where only two were provided in the original act.

A careful examination of the business done in the several circuits makes it clear that a third circuit judge should be given to the sixth circuit. It has the largest population of any circuit excepting the eighth, and has a larger population per judge than any of the circuits that now have three judges each. There is an enormous business in the courts of this circuit, so much so that it is impossible to keep up with the current work of the courts.

In addition to this two of the district judges are physically unable to keep up with their work, so that they are not able to sit with the court of appeals or even to perform the work of their several districts, and are helped in their own work by other judges. The amount of business pending, the territory involved, including as it does the States of Michigan, Ohio, Kentucky, and Tennessee, and a comparison of the business in that circuit as compared with the business of other circuits, clearly indicates that an additional judge is needed.

Hon. Justice Harlan, the Supreme Court assigned to that circuit

appeared before the committee and earnestly urged the passage of the bill as being absolutely necessary in furtherance of justice.

Hon. William H. Taft, one of the United States circuit judges, also appeared before the committee, giving detailed information as to the condition of the circuit and making it clear that an additional judge is needed. His letter, addressed to the chairman of this committee, is hereto appended and made a part of this report on account of the valuable information therein contained.

A statement is also attached hereto which was prepared by Hon. Richard Wayne Parker, of the Judiciary Committee, giving important information, taken from the reports of the Attorney-General, and which will make clear the importance of this legislation.

Attention is also called to the resolutions of the Cincinnati Bar Association.

The committee therefore recommend the passage of the bill.

UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT,
Cincinnati, June 10, 1898.

MY DEAR GENERAL: I have your letter of the 7th instant requesting that I send to you at the earliest possible moment a statement showing the necessity for the passage of the bill to create an additional judgeship in the sixth circuit. I hasten to comply.

By the act creating the court of appeals Congress increased very greatly the appeals and writs of error from the circuit and district courts by doing away with the $5,000 minimum limit on the appellate jurisdiction theretofore in force in the case of appeals and writs of error to the Supreme Court, and allowing all cases otherwise appealable to be appealed to the courts of appeals without regard to the amount involved. At the same time Congress appropriated for this appellate work the time of three judges. But one new judge was added to the judicial force by the act. This means that the judicial force available for disposition of business in the circuit and district courts has been reduced by two judges, at least to the extent to which they must devote themselves to appellate work.

In order to hold the circuit court of appeals, it is necessary to call upon a district judge, except when the circuit justice is present. The circuit justice is not able, because of his duties in the Supreme Court, to be present in the court of appeals more than a week in a year. The result is that a court of appeals can not be held without taking a district judge away from his district, and because the circuit judges are disqualified from sitting in cases which they hear in the circuit court it is usually necessary to have in attendance a second district judge. This greatly interferes with the work of the district judges in their own districts, and it is a material detriment to the character of the work in the courts of appeals, for the frequent changes in the personnel of the court destroys the continuity and uniformity of its rulings. This defect in the organization in the courts of appeals was present in every circuit but the second, where there were already two circuit judges, so that the additional circuit judge given by the original act made a court of three circuit judges. Recognizing the embarrassment due to its failure to provide in other circuits judges enough to hold a circuit court of appeals without calling on the district judges, Congress has provided a third circuit judge in the seventh, eighth, and ninth circuits. I think this course was a very wise one, and I hope that nothing I shall say will be construed into an insinuation that a third circuit judge was not badly needed in each of the circuits to which one has been given. It is the purpose of what I write, however, to show that however great the need for such a judge in the seventh and ninth circuits it is very much greater in the sixth circuit.

The sixth circuit is composed of the States of Michigan, Ohio, Kentucky, and Tennessee. There are two districts in Michigan, two in Ohio, one in Kentucky, and three in Tennessee. But one district judge is appointed for the eastern and middle districts of Tennessee. Every other district has a district judge, so that there are seven in all in the circuit. There are two circuit judges. The business in the eastern district of Michigan is heavy in equity and law suits, and it has more admiralty business than any district in the United States except the southern district of New York. The district judge is so much occupied that he finds it impossible to give

any time at all to the court of appeals. He has heard and has written the opinion in one case in that court during the two years last past. It has been necessary for the judge of the western district of Michigan to help him in the work of the district. The northern district of Ohio has a very heavy business, and the judge of that court, instead of helping in the court of appeals, needs help in his district. The southern district of Ohio has so occupied the district judge of that district that in the last four years he has heard but few cases in the court of appeals and written opinions in still less.

There are five places for holding court in Kentucky. The criminal business is large. During 1895, 538 criminal cases were disposed of; in 1896, 513; and in 1897, 403. In order to keep up with his dockets the judge must work incessantly from the middle of September to the middle of July, and we can not call upon him to sit in the court of appeals at all. He has heard and written opinions in two cases in two years, and the circuit judges have been obliged to devote some time to assisting him in his circuit work. The eastern and middle districts of Tennessee, with but one judge for both, are like the Kentucky district. Both the civil and the criminal dockets are heavy. In 1895 there were 1,444 criminal cases disposed of in those districts; in 1896, 1,873 cases; and in 1897, 596 cases. Only in the western district of Tennessee and in the western district of Michigan is the business of such moderate proportions that we feel justified in asking the judges to sit with us in the court of appeals, and we have to use them so much to help out their brethern in other districts that we are much restricted in drafting them into appellate service. Meantime the appellate work is of the heaviest character. A comparison of the cases in the courts of appeals reports, case for case, between our circuit and other circuits will show that no circuit in the country has had as burdensome cases as the sixth circuit. The number of cases in the court of appeals of each circuit since the organization of the court, taken from the Attorney-General's reports, is shown in the following table:

Cases docketed each year in circuit courts of appeals down to June 30, 1897.

Circuit.	1892.	1893.	1894.	1895.	1896.	1897.	Total.	Number of circuit judges.
Eighth	207	163	182	169	157	151	1,029	3
Second	196	116	140	189	145	142	928	3
Fifth	86	106	92	150	107	99	640	2
Sixth	73	64	103	108	122	80	550	2
Seventh	79	64	69	63	77	95	447	3
Ninth	80	67	57	59	68	71	402	3
Third	42	26	51	43	47	52	261	2
First	40	68	28	34	51	33	254	2
Fourth	38	30	42	45	41	52	248	2

This table may be inaccurate in its statement of cases in 1892 and 1893, because the periods in those two years may overlap; but as the same mistake occurs with respect to each circuit the table, for purposes of comparison, will suffice. It will be seen that since the organization of the court there have been docketed in the court of appeals for the sixth circuit 103 more cases than in that of the seventh circuit and 148 more cases than in that of the ninth circuit. If it be noted that in 1897 the cases in the sixth circuit court of appeals were only 80, and fell 15 below the number docketed in the same year in the court of the seventh circuit, it is to be said that the falling off was only temporary, for during the current fiscal year there have been docketed in our court of appeals 105 cases in eleven months. It would certainly seem that with 23 per cent more business than the court of appeals of the seventh circuit, and 36 per cent more than the court of appeals in the ninth circuit, we should have the same judicial force as those courts have to expedite the litigation in the sixth circuit.

The same difference in the civil business in the circuit and district courts of the three circuits appears from the reports of the Attorney-General. The pending cases shown in those reports are apt to be misleading, because there is no distinction made between "live" cases and those which are practically dismissed or ended, though remaining on the docket. A more certain criterion of the amount of business done in the circuit and district courts is to be found in the suits filed each year. The following table shows the aggregate of law, equity, and admiralty suits begun in the sixth and seventh circuits in the four fiscal years 1894, 1895, 1896, and 1897 in which the United States was not a party. The suits in the ninth circuit are only given for the years 1896 and 1897, because prior thereto Utah was a Territory.

TABLE A.—*Admiralty, law, and equity suits filed.*

SIXTH CIRCUIT.

	1894.	1895.	1896.	1897.
Michigan, eastern	590	327	294	280
Michigan, western	97	136	124	94
Ohio, northern	229	142	126	144
Ohio, southern	246	239	221	255
Kentucky	144	156	127	209
Tennessee, eastern, middle, and western	221	132	180	161
Total	1,527	1,132	1,072	1,143

RECAPITULATION.

1897	1,143
1896	1,072
1895	1,132
1894	1,527
	4,874
1896 and 1897	2,215

SEVENTH CIRCUIT.

	1894.	1895.	1896.	1897.
Illinois, northern	578	465	448	442
Illinois, southern	185	145	199	83
Indiana	205	140	135	126
Wisconsin, eastern	95	84	92	64
Wisconsin, western	50	72	80	63
Total	1,113	906	954	778

RECAPITULATION.

1897	778
1896	954
1895	906
1894	1,113
	3,751
1897 and 1896	1,732

NINTH CIRCUIT.

	1896.	1897.
California, northern	172	184
California, southern	41	43
Nevada	18	12
Oregon	120	62
Washington	248	200
Idaho	24	23
Montana	36	40
Utah	42	65
Total	701	629

RECAPITULATION.

1896	701
1897	629
	1,330

It will be seen from this table that the new civil business in the circuit and district courts of the sixth circuit for the last four years exceeds that in the seventh circuit by 1,123 cases, or 30 per cent, while the new business for the last two years in the sixth circuit exceeds that in the ninth circuit by 885 cases, or 66 per cent.

[House of Representatives, Judiciary Committee.]

No. 1.—*Number of judges, population, and suits in the various circuits of the United States, as taken from reports of the Department of Justice, 1897, and Census.*

Circuits	1.	2.	3.	4.	5.	6.	7.	8.	9.
Districts	Maine	Vermont	New Jersey	North Carolina, eastern.	Georgia, northern.	Ohio, northern	Indiana	Minnesota	California, northern.
Do	New Hampshire	Connecticut	Pennsylvania, eastern.	North Carolina, western.	Georgia, southern.	Ohio, southern	Illinois, northern.	Iowa, northern	California, southern.
Do	Massachusetts	New York, northern.	Pennsylvania, western.	South Carolina	Florida, northern.	Michigan, eastern.	Illinois, southern.	Iowa, southern	Oregon.
Do	Rhode Island	New York, eastern.	Delaware	Maryland	Florida, southern.	Michigan, western.	Wisconsin, eastern.	Missouri, eastern.	Nevada.
Do		New York, southern.		Virginia, eastern.	Alabama, northern and middle.	Kentucky	Wisconsin, western.	Missouri, western.	Washington.
Do				Virginia, western.	Alabama, southern.	Tennessee, eastern and middle.		Arkansas, eastern.	Idaho.
Do				West Virginia	Mississippi, northern and southern.	Tennessee, western.		Arkansas, western.	Montana.
Do					Louisiana, eastern.			Nebraska	Alaska.
Do					Louisiana, western.			Colorado	Arizona.
Do					Texas, northern.			Kansas	
Do					Texas, eastern			Wyoming	
Do					Texas, western			North Dakota	
Do								South Dakota	
Do								Utah	
Do								New Mexico	
Do								Oklahoma	
Do								Indian Territory, northern.	
Do								Indian Territory, central.	
Do								Indian Territory, southern.	
Circuit judges	2	3	2	2	2	2	3	3	3
District judges	4	5	4	7	12	7	5	17	8
Total judges	6	8	6	9	14	9	8	20	11
Population:									
1890	3,622,065	7,076,533	6,871,440	6,230,260	8,385,502	9,392,358	7,709,635	10,914,853	2,225,264
For each judge	603,677	884,569	1,145,240	692,251	598,964	1,043,595	963,704	545,742	202,297
Civil suits begun 1897, United States not party	435	1,856	647	380	1,061	1,143	778	2,681	618
Civil suits pending, United States not party	1,454	23,042	2,852	1,337	2,095	7,108	2,365	4,707	1,498
Criminal prosecutions pending	86	352	144	1,761	4,179	634	452	2,376	214
Civil suits pending, United States party	40	5,856	304	182	342	194	62	353	256
Total cases pending	1,580	29,250	3,300	3,280	6,616	7,936	2,879	5,436	1,968
Cases pending per judge	263	3,656	550	364	473	881	359	271	179
Appeals pending	33	117	11	18	43	65	77	135	48
Appeals disposed of, 1897	45	112	58	56	94	90	76	133	65

See Report of Attorney-General, 1897 (p. 1 and pp. 16 to 21, 28 and 29); also, Report of Register of the Department of Justice, same year.

When, in addition to this, you consider the very much greater criminal docket in the sixth circuit than in either of the others, owing to the "moonshine" regions of Kentucky and Tennessee, I feel certain that your honorable committee will clearly perceive how much greater is the need for a third circuit judge in the sixth circuit than in the seventh and ninth circuits. We have striven to keep up with the business in the court of appeals, but it is gradually slipping away from us. There are forty-four cases on our docket argued and submitted, but not decided, because the members of the court have been so much occupied in circuit work that they have had no time to write the necessary opinions, and we have continued for hearing more cases until October next at this May session than ever before in the history of the court.

We hold three calendar sessions of the court—in October, February, and May—and we hold monthly sessions for stipulated business, so that there is very little time during nine months of the year when the court is not in session. To undertake circuit work in addition much interferes with the appellate work of the circuit judges, and yet we are constrained to do a considerable amount of it to assist those district judges who help us. Thirty opinions a year for a Supreme Court justice is a very good average. We hear on an average from ninety to one hundred cases a year in the court of appeals, and then have to do considerable circuit work besides. When we call in district judges we can not ask them to do one-third of the work, in view of their duties at the circuit, and the result is that the two circuit judges have to do the bulk of the appellate work. We do not wish to complain of the labor, for we realize that if it is too heavy we have the right to resign, but we merely say this much to show that the physical impossibility of doing more than a certain amount of judicial work may result in serious delay and prejudice to litigants.

Mr. Parker, of your committee, has compiled some quite interesting statistics in reference to the comparative population and business of the nine circuits. He shows in this statement that by the census of 1890 the population of the sixth circuit was 9,392,258, of the seventh circuit was 7,709,635, and of the ninth circuit was 2,225,264, and that the population for each Federal judge in the sixth circuit was 1,043,595, in the seventh circuit was 963,704, and in the ninth circuit was 202,297, and that the cases pending per judge in the sixth circuit were 881, in the seventh circuit 359, and in the ninth circuit 179. These figures need no comment from me.

There is a reason why aid should be given to the sixth circuit at once, and that is the physical condition of the two district judges in Ohio. Neither has been able to do more than half his usual work during the past year because of physical disability, and district judges from other districts have been designated to take their places. The business is accumulating in a most discouraging way and litigants have suffered much injustice from delays occasioned by this congestion.

I respectfully urge the immediate passage of the bill.

Very respectfully, yours,

WM. H. TAFT.

Hon. DAVID B. HENDERSON,
Chairman of the Judiciary Committee, House of Representatives, Washington, D. C.

Resolutions of the Cincinnati Bar Association.

Resolved, In view of the volume of litigation in the Federal courts of the sixth circuit, and particularly the circuit court of appeals thereof, that the necessities of the due and proper administration of justice require the appointment of an additional circuit court judge for this circuit; and, further, that a copy of this resolution be presented to our Senators and Representatives in Congress with the request that they lay it before the proper Congressional committees, pointing out the fact that a third circuit judge has been appointed for the seventh and ninth circuits, although the business transacted by the circuit courts of appeal for those circuits, respectively, is one-third less in amount than that done by the circuit court of appeals for the sixth circuit, and that they use their best efforts to procure an amendment of the existing law, so as to provide for the appointment of such an additional judge.